IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5750 OF 2005

1. Shri. Dilip Mahadeo Mahadar
2. Prithviraj Eknath Kumbhar
3. Anil Chottu Singh ...Applicants

Vs.

The State of Maharashtra ...Respondent

Shri. A.S. Khandeparkar i/by M.P.Tekavde &
Mrs.Swati Tekavde for the Applicants.
Shri. R.Y. Mirza, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 21, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicants and the learned A.P.P. for the State. The offence has been registered under section 420 read with section 34 of the Indian Penal Code and sections 3 and 4 of the Maharashtra Protection and Interests of the Depositors (in Financial Establishment) Act, 1999 at Satara City Police Station.

2. The F.I.R. is lodged by one Atmaram Lohar. The offence relates to deposits paid to a company by name Kalpataru Agro India Ltd. The learned Advocate for the Applicant submitted that at highest the Applicant Nos.1 and 3 can be said to be the collection agents appointed by the said company. He stated that the Applicant No.2 was employed as a cashier of the said company. He pointed out the statement of the complainant which discloses that the Applicant No.1

made a representation to the Applicant to invest the amount of Rs.45,000/- with the said company. Thereafter, sum of Rs.25,000/- was invested by the complainant at the instance of one Shashikant Ghorpade. He pointed out that the first informant was himself an agent of the company and infact against the security of the deposit given by him to the company, he has obtained loan of Rs.45,000/- which is admittedly not repaid. He, therefore, submitted that no offence has been made out as against the Applicants.

3. The learned A.P.P. stated that about 361 investors have come forward to make allegations against the said company regarding non-payment of the deposits. He submitted that the Applicant No.2 was the cashier in the said company. He pointed out that some of the witnesses have stated that the Applicant Nos.1 and 3 induced the investors to invest the amounts and the amounts were paid to the Applicant Nos.1 and 3 who deposited the same with the company and receipts were issued by the company to the depositers. He submitted that the investigation is in progress and therefore, the Applicants cannot be enlarged on bail.

4. I have considered the submissions. In so far as the offence under section 3 and 4 of the said Act

of 1999 is concerned, the same need not be considered as a Full Bench of this Court has declared the said Act of 1999 as unconstitutional. The other offence registered under section 420 read with section 34 of the Indian Penal Code. It is not the case of the prosecution that the Applicants were in any manner responsible for day to day affairs of the company. In fact, even according to the prosecution, the Applicant Nos.1 and 3 were the collection agents of the said company. Even accepting the case made out by some of the investors in their statements, at highest what can be said is that the Applicant Nos.1 and 3 collected the amounts by making representation to the said investors and the said amounts were deposited with the company and the company issued receipts in the names of the investors. Subsequently, the company did not repay the amounts. It is not the case of any of the witnesses that the Applicants have themselves appropriated the amounts received from the investors. The first informant himself appears to be an agent of the said company.

5. If this is the state of affairs, the Applicants deserves to be enlarged on bail. They have been in custody from 27th July, 2005. However, stringent conditions will have to be imposed. Hence, I pass the following order:

: O R D E R :

i) The Applicant shall be enlarged on bail in connection with **C.R.No.260 of 2005 registered with Satara Police Station,** subject to furnishing a personal bond of **Rs.10,000/- each** with one or two sureties each in the like amount.

ii) The Bail is granted subject to condition that the Applicants will remain present before the Investigating Officer on every Monday and Tuesday between 04.00 p.m. to 06.00 p.m. for a period of three weeks from today and will co-operate for investigation. After period of three weeks, the Applicants will remain present before the Investigating Officer as and when called upon to do so till the filing of the chargesheet.

iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

iv) The Applicants shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE